No. 90-978

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

MELODY PERKINS,

Petitioner,

vs.

GENERAL MOTORS CORPORATION,

Respondent.

MELODY PERKINS,

Petitioner,

vs.

THOMAS SPIVEY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

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BRIEF FOR GENERAL MOTORS CORPORATION IN OPPOSITION

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BRIEF FOR GENERAL MOTORS CORPORATION IN OPPOSITION

Respondent General Motors Corporation ("GM") submits this brief in opposition to the petition for a writ of certiorari in these consolidated cases.[1]

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[1] A list of all of GM's affiliates and non-wholly owned subsidiaries is included as an Appendix to this brief in conformity with Rule 29.1.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. C1-C53) is reported at 911 F.2d 22. The district court's Findings of Fact, Conclusions of Law and Order Granting Judgment For Defendant And Against Plaintiff on the Title VII claim in *Perkins* v. *General Motors Corp.* (Pet. App. E1-E68) is reported at 709 F. Supp. 1487. The order of the district court granting summary judgment on the negligence claim in *Perkins* v. *General Motors Corp.* (Pet. App. F1-F11) is unreported. The order of the district court granting summary judgment in *Perkins* v. *Spivey* (Pet. App. D1-D12) is unreported. The order of the district court imposing sanctions on petitioner and her counsel in *Perkins* v. *General Motors Corp.* is reported at 129 F.R.D. 655.

JURISDICTION

The judgment of the court of appeals was entered on July 24, 1990. Petitions for rehearing with suggestions for rehearing en banc were denied on August 29, 1990. Pet. App. A1-A2, B1-B2. The petition for a writ of certiorari was filed on November 27, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

The question in this case is whether the court of appeals correctly applied *Lytle* v. *Household Mfg., Inc.*, 110 S. Ct. 1331 (1990). The court of appeals expressly considered and relied upon *Lytle* in its decision, although it did not discuss or decide the question presented by petitioner. In any event, as we demonstrate below and as petitioner concedes (Pet. 44 & n.15), the hypothetical question presented by the petitioner will become real *only* if petitioner's negligence claim survives GM's expected motion for summary judgment and then *only* if petitioner prevails

after a trial on the merits. If all that occurs, the question petitioner presents should first be considered by the courts below. There is no reason for this Court to review the court of appeals' decision at this stage.

1. Petitioner Melody Perkins was employed by GM as a production supervisor in the body shop at GM's Fairfax Plant in Kansas City, Kansas. Respondent Thomas Spivey was the superintendent in charge of the body shop. Pet. App. C6-C7. Petitioner contends that while employed at the Fairfax Plant, she was subjected to sexual harassment by Spivey and others. According to petitioner, Spivey coerced her to have sexual intercourse on a regular basis starting very shortly after she began her employment. She and Spivey drove separately to his apartment and other locations, where he supposedly "raped" her approximately twice each month.[2] Similar "rapes" also occurred when they went on vacation together. Petitioner also claims that other GM employees at Fairfax made leering gestures, sexual jokes, catcalls or other actions or comments of a sexual nature directed toward her and other women. *Ibid.*

Petitioner was first employed by GM on July 24, 1978, at the Fairfax Plant. On May 1, 1980, she was laid off. Several months later, she was hired at the GM plant in Bowling Green, Kentucky, where she worked until she

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[2] In her petition and throughout this litigation, petitioner has used the term "rape" to describe the sexual relationship she had with Spivey over several years. However, it is undisputed that petitioner met Spivey at various places (including his apartment and motels) for the purposes of engaging in sexual intercourse, that she sometimes brought her vibrator with her, and that those encounters often included dinner and other social activities. Moreover, there has certainly *never* been a finding that Spivey raped petitioner, or even a prosecution for rape, and the district court, following a 30-day trial, found that the sexual relationship was consensual and was sought by petitioner in order to advance her career at GM. Pet. App. E38-E45.

was again laid off on February 28, 1982. When petitioner learned that she might be laid off in Kentucky, she contacted Spivey and asked him about the possibility of her returning to work at the Fairfax Plant. During those conversations, petitioner sought Spivey's assistance in getting her job back. She was rehired at Fairfax on May 10, 1982. Petitioner testified that the sexual harassment, which allegedly had begun during her previous tenure at Fairfax, resumed shortly after her return to the Plant. On January 30, 1986, after Spivey refused her demand for a promotion, petitioner for the first time complained to GM about his conduct. *Id.* at C6-C7, E8-E45.

2. That same day, petitioner left her job at Fairfax, consulted with an attorney, filed a state workers' compensation claim and also filed a sexual harassment complaint with the Equal Employment Opportunity Commission.[3] She later filed three separate lawsuits. On May 27, 1986, she filed a diversity action against GM in federal court, alleging that GM had breached a duty it supposedly owed under Kansas law to maintain a safe workplace free from sexual harassment.[4] Two days later, petitioner filed a suit against Spivey in Missouri state court, alleging assault, battery and outrageous conduct. And in January of 1987,

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[3] Petitioner states that she was discharged from her job (Pet. 7), but in fact she stopped working of her own accord, and applied for and is now on extended disability leave. Her employment has *not* been terminated.

[4] GM sought to have the negligence suit dismissed on the ground that the Kansas workers' compensation statute provided the exclusive remedy for petitioner's alleged injuries. Petitioner argued in opposition that the exclusive remedy provision of workers' compensation did not apply in the absence of physical, on-the-job injuries. The district court lifted its stay of the negligence action after a Kansas state court agreed with petitioner that her claim did not involve physical injuries covered by workers' compensation. *Perkins* v. *General Motors Corp.*, No. 87 C 4226 (D. Ct. Wyandotte Cty.).

after receiving a "right to sue" letter from the EEOC, petitioner filed a third suit, again in federal court against GM, alleging sexual harassment in violation of Title VII. *Id.* at C8; Pet. 6-9.

The district court consolidated the two federal actions against GM, but the state action against Spivey proceeded separately.[5] At a pretrial conference in the GM cases held on October 21, 1988, the parties and the judge (District Judge D. Brook Bartlett) discussed possible evidentiary problems that might be caused by the simultaneous trial of the jury and non-jury claims against GM.[6] A few days later, petitioner filed a bifurcation motion, proposing that the Title VII claim be tried to the court *first*, before any jury trial on the negligence claim. Petitioner argued that under this procedure, "the questions for the jury and the evidence for the jury [would be] necessarily curtailed." Later that same day, petitioner stated that her client had "agreed to waive a trial by jury." C.A. App. 356. GM did not agree to the waiver and the trial court denied the bifurcation motion. On October 28, 1988, the district court entered summary judgment against petitioner on the negligence claim. Pet. App. F1-F10.

The trial of the Title VII claim began on November 1, 1988. On January 11, 1989, after hearing evidence for thirty days, the district court ruled from the bench in favor of GM. The court found that petitioner participated in a

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[5] Less than a month before the trial was set to begin in the state court action, petitioner changed her strategy and sought to join her claim against Spivey with the federal actions against GM. The federal court refused to permit that, however. Petitioner then dismissed her state action without prejudice, and filed a new suit in federal court raising the same claims against Spivey. Pet. 9-10; *Perkins* v. *General Motors Corp.*, 129 F.R.D. 655, 662-664 (W.D. Mo. 1990).

[6] Petitioner did not request a jury trial on her Title VII claims.

consensual relationship with Spivey in the hope of advancing her career and that petitioner "failed to establish that GM knew or should have known of the harassment about which she complains." Pet. App. E65.[7]

A week later, a different judge of the same court (Chief Judge Scott O. Wright) entered summary judgment in the case against Spivey, holding that in light of the judgment in the GM case, petitioner was collaterally estopped from claiming again that her relationship with Spivey was not consensual. Pet. App. D1-D2.

3. The court of appeals affirmed the district court's judgment in most respects. However, it reversed in part the grant of summary judgment on the state-law negligence claim against GM. The court held that since "Kansas law does not allow recovery for emotional distress caused by negligence absent some bodily injury" (Pet. App. C20-C21), it would not allow recovery for sexual harassment caused by negligence absent bodily injuries. But the court held that employers do have a duty under Kansas law not to cause physical injuries to third parties by negligently hiring or retaining supervisors who they knew (or should

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[7] The district court issued its written Finding of Fact, Conclusions of Law and Order on April 10, 1989. Pet. App. E1. Several months later, the court issued another order imposing sanctions against petitioner and her counsel under Rules 11 and 26(g), Fed. R. Civ. P., and 28 U.S.C. § 1927. *Perkins* v. *General Motors Corp.*, 129 F.R.D. 655 (W.D. Mo. 1990).

The court sanctioned petitioner and her counsel for persistently making scandalous and unsupported allegations against a possible defense witness, for making factual misrepresentations to the court in a motion for leave to amend petitioner's complaints, by intentionally failing to disclose the name of a witness, for making misrepresentations to the court on the evidence certain witnesses would present in order to convince the court that the evidence would be relevant, and by filing an untimely, bad-faith motion to recuse the trial judge after the Title VII bench trial had been completed. *Id.* at 660-672.

have known) to be "incompetent or dangerous". Because it construed petitioner's claims to include allegations of physical injury, the court of appeals held that the district court's grant of summary judgment was in error. Accordingly, the court remanded the case for further proceedings. Pet. App. C20-C24.

In rejecting GM's argument that a remand was unnecessary because collateral estoppel effect should be given in the negligence action to the judgment against petitioner on the Title VII claim, the Eighth Circuit specifically discussed and applied (Pet. App. C32-C34) this Court's recent decision in *Lytle* v. *Household Mfg., Inc.*, 110 S. Ct. 1331 (1990).[8] The court of appeals held that "[i]f the district court finds that a genuine issue as to material fact exists as to [petitioner's] allegations against GM concerning its negligent retention of Spivey, then [she] must be given a jury trial." Pet. App. C34. The court did not discuss or decide whether, in the event that petitioner's negligence claim survives GM's expected motion for summary judgment and she then prevails in her jury trial, the previous dismissal of the Title VII claim would be subject to reconsideration.

The court of appeals affirmed the award of summary judgment in the separate (and subsequent) case against Spivey. Citing *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 329-333 (1979), the court held that it does not violate the Seventh Amendment to give collateral estoppel effect to a prior judgment in a separate equitable action. Pet. App. C46-C49. The court rejected petitioner's argument that *Lytle* required a different result:

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[8] GM made that argument in its briefs and oral argument *before* this Court decided *Lytle*. The court of appeals requested supplemental briefing after this Court issued the *Lytle* decision, and the court below relied upon *Lytle* in its opinion.

> Perkins argues that *Lytle* v. *Household Mfg., Inc.*, 110 S. Ct. 1331 (1990), requires a different result. We disagree. First, *Lytle* does not overrule *Parklane* but cites it favorably. See *id.* at 1334, 1336, 1337. Second, the holding of *Lytle* is limited to a case where the party brought both equitable and legal claims *in the same action*, but the district court erroneously dismissed the legal claim. *Id.* at 1334. In the case at bar, the legal and equitable claims were not brought in the same action and the district court properly refused to grant Perkins leave to join them. Therefore, *Parklane* controls, not *Lytle*.

Pet. App. C49 n.12. The court of appeals did not consider or decide whether the dismissal of the claim against Spivey would be subject to reconsideration if petitioner ultimately prevails in her negligence claim against GM and the district court in that case reconsiders and reverses the judgment it entered in favor of GM following the trial on petitioner's Title VII claim.

REASONS FOR DENYING THE PETITION

The arguments in the certiorari petition are based on petitioner's assertion (Pet. 12) that "[t]he Eighth Circuit specifically found that *Lytle* v. *Household Mfg. Co., Inc.*, 110 S. Ct. 1331 (1990) did not require the vacation of the Title VII Findings of Fact and Conclusions of Law." But the Eighth Circuit made no such finding; nowhere in the court of appeals' opinion is there any discussion or resolution of the question of whether *Lytle* requires that the Title VII judgment be set aside.

There is absolutely no reason for this Court to intervene at this stage. The legal issue petitioner asserts may never become more than hypothetical. Moreover, the question presented by petitioner involves at most the application

of settled law,[9] and was not in any sense (correctly or incorrectly) decided by the court of appeals or the district court. If petitioner ultimately prevails on her negligence claim, she will have the opportunity to seek relief from the Title VII judgment at that time. Resolution of the hypothetical question presented by the petitioner will be necessary *only* if petitioner's negligence claim survives GM's expected motion for summary judgment and then *only* if petitioner prevails after a trial on the merits. At that point, the question should first be considered by the courts below. To paraphrase what this Court said in *Lytle*, "[a]pplying [the Court's] analysis in [*Lytle*] to the facts of a particular case without the benefit of a full record or lower court determinations is not a sensible exercise of this Court's discretion." 110 S. Ct. 1336 n.3. The petition for a writ of certiorari should therefore be denied.

I. The Court Of Appeals' Decision Is Not Contrary To *Lytle* v. *Household Mfg., Inc.*

Petitioner contends that the court of appeals' decision is contrary to *Lytle* v. *Household Mfg., Inc.*, 110 S. Ct. 1331 (1990). In her view, when the court of appeals partially reversed the district court's dismissal of her negligence claim, it should also have vacated—or "held in abeyance" (Pet. 56 n.18)—the judgment it reached after the lengthy trial on her Title VII claim.[10] Petitioner maintains

[9] Of course, even if petitioner prevails on her negligence claim, a serious question will remain as to whether the negligence and Title VII judgments are inconsistent. This case is not like *Lytle*, where the plaintiff's two claims (brought under Title VII and § 1981) were virtually identical. 110 S. Ct. 1337-1339.

[10] Petitioner never claimed below that the Title VII judgment was clearly erroneous.

that such action would in turn require the court to vacate or hold in abeyance the grant of summary judgment in her case against Spivey, since that judgment was based on the collateral estoppel effect of the Title VII decision. The court of appeals erred, petitioner maintains (Pet. 12), when it "specifically found that *Lytle* did not require the vacation of the Title VII Findings of Fact and Conclusions of Law, nor the Summary Judgment based on collateral estoppel therefrom in Spivey's favor."

The fundamental flaw in petitioner's argument is that the court of appeals never decided or even discussed the question she presents. The court *never* "found that *Lytle* did not require the vacation of the Title VII" judgment. Nothing in the court of appeals decision precludes the courts below from eventually reaching that issue, although they may never have occasion to do so.

The court of appeals examined the three arguments raised by the petitioner: (1) that the district court misconstrued Kansas law when it dismissed her negligence claim against GM; (2) that the decision of the district court after trial on her Title VII claim should be reversed because the judge improperly denied the recusal motion she filed nearly three months after the trial; and (3) that the grant of summary judgment in her subsequent, separate tort action against Spivey was improper and resulted in a denial of her Seventh Amendment rights. Pet. App. C3-C5.[11] The court of appeals agreed in part with petitioner's first argument, but rejected her other two contentions.

Petitioner's negligence claim against GM alleged that Spivey forced her to have sexual intercourse, that as a

[11] Petitioner made this argument even though she told the district court that she "agreed to waive" her right to a jury trial and asked that her negligence action against GM be tried to the court *after* the court decided her Title VII claim. Pet. App. C33 n.10; C.A. App. 356.

result she suffered psychological injuries and physical pain, and that GM breached its duty to maintain a safe workplace by negligently hiring or retaining supervisors who the company knew or should have known to be dangerous. The district court found that there was no such cause of action under Kansas law and dismissed the claim in its entirety. The court of appeals agreed only in part, holding that although there was no cause of action for harassment leading solely to psychological injuries, insofar as petitioner may have alleged actual physical injury and alleged that GM was negligent in retaining Spivey, she stated a valid claim under Kansas law. The court remanded the case to the district court for further proceedings. The court of appeals recognized (Pet. App. C34) that petitioner's negligence claim might be dismissed again at the summary judgment stage, but held that if the claim survives summary judgment, petitioner must be given a jury trial.

The court below did not speculate at all on whether petitioner's Title VII claim would be subject to reconsideration should she prevail on her negligence claim. The court of appeals' only discussion of the propriety of the Title VII judgment came in its rejection of the absolutely frivolous argument that the district judge should have granted petitioner's motion for recusal, which had been made some months *after* the judge issued his ruling from the bench.[12]

Contrary to petitioner's claim (Pet. 12), the court of appeals did not decide—and did not have occasion to decide—whether the judgment against the petitioner following the trial of her Title VII claim would have to be vacated if

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[12] The frivolousness—and the bad faith—of the recusal motion is apparent not only from the opinion of the court of appeals (Pet. App. C34-C40), but also from the district court's opinion imposing sanctions against petitioner and her counsel as a result of several aspects of their conduct in this case, including the recusal motion. *Perkins* v. *General Motors Corp.*, 129 F.R.D. at 670-672.

petitioner ultimately prevails on her negligence claim. At the stage at which the court of appeals considered the case, any decision on that issue would have been purely hypothetical and would have been a decision on an issue not previously considered or decided by the district court. Moreover, it would be impossible to determine what factual issues were resolved in petitioner's favor by a verdict on the negligence claim before the trial on that claim is completed. And without that information, it cannot be known whether the negligence verdict would be inconsistent with the Title VII judgment.

The district court's judgment on the Title VII claim was not based on one factual issue alone. In addition to finding that petitioner's relationship with Spivey was consensual, the district court found among other things that petitioner failed to establish (1) that GM knew or should have known of the harassment about which she belatedly complained (Pet. App. E65); or (2) that there was a sexually hostile work environment at the Fairfax Plant (*id.* at E60-E62); or (3) that submission to the allegedly unwelcome sexual advances was an express or implied condition of receiving job benefits or that refusal of those advances would result in job detriment. *Id.* at E60.[13] It is possible that petitioner could prevail on her negligence claim without proving these elements of her Title VII allegations.

There is no reason for this Court at this stage to decide an issue that has never been decided by either the court of appeals or the district court and that may never have to be decided by any court. It cannot be regarded as a foregone conclusion that petitioner's claim will survive

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[13] The finding that petitioner failed to establish that submission to the advances was an express or implied condition of receiving job benefits was fatal to her claim of "quid pro quo" sexual harassment discrimination. *Ibid.*

GM's expected motion for summary judgment. Unless petitioner establishes that there is factual support (*i.e.*, at least a "genuine issue [of] material fact") for each element of her negligence claim, the district court will be compelled to grant GM's motion. "[T]he plain language of Rule 56(c) mandates the entry of summary judgment * * * against a party who fails to make a showing sufficient to establish the existence of an essential element to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp.* v. *Catrett*, 477 U.S. 317, 322 (1986). To give but one example, among the elements of petitioner's negligence claim is that GM knew or should have known that Spivey was "incompetent or dangerous." Pet. App. C23. After the 30-day bench trial, the district court found (Pet. App. E65-E66) that there was no evidence that GM knew or should have known about the alleged sexual harassment. In light of that finding, it seems at least doubtful that petitioner will be able to establish that there is a genuine issue of material fact on whether GM knew or should have known that Spivey was incompetent or dangerous.

Even if petitioner's claim somehow withstands GM's motion for summary judgment, the possibility that she will prevail after a trial is speculative at best. In the district court, petitioner wanted to have her claims tried to the bench, rather than to a jury. Pet. App. C33 n.10. After a 30-day trial, her preferred decisionmaker rejected her Title VII claim in its entirety and found, *inter alia*, that she had fully consented to the relationship with Spivey. That finding, which was fatal to petitioner's Title VII claim, would also be fatal to her negligence claim. It is at least probable that another decisionmaker faced with the same evidence would make the same finding and would also render a verdict in favor of GM.

The question of whether the district court should give collateral estoppel effect to the judgment on petitioner's

negligence claim will arise *only* if that claim survives GM's motion for summary judgment *and* petitioner prevails after a trial. Only then would it be necessary to determine whether the negligence verdict is inconsistent with the Title VII decision, and whether the Title VII decision should be vacated. And only if the district court determines that the Title VII decision needs to be set aside would the question arise of whether the judgment in the case against Spivey—which was based on the collateral estoppel effect of the Title VII decision—also needs to be set aside. The question petitioner presents to this court is thus not only one that the courts below have never considered or decided, but it is also a hypothetical question based on several layers of assumption that are unlikely ever to prove correct. Resolving that hypothetical question at this stage would be an enormous waste of the Court's time and resources and would unnecessarily interfere with the "just, speedy, and inexpensive determination of [this] action." Rule 1, Fed. R. Civ. P.

II. Petitioner Has Waived Any Right She May Have Had To Claim That A Favorable Judgment On Her Negligence Claim Is Entitled To Collateral Estoppel Effect In Her Title VII Case

The court of appeals did *not* hold that if petitioner prevails on her negligence claim, that judgment would not be entitled to collateral estoppel effect in her Title VII case. The court simply did not reach that issue. But if it *had* reached such a conclusion, it would have been fully justified under the unusual facts of this case. Petitioner now maintains that it would be a denial of her Seventh Amendment rights to allow the Title VII decision against her to stand. She argues that she is entitled to further proceedings (and perhaps a jury trial) on her negligence claim against GM, and if she ultimately prevails on that

claim, she has a Seventh Amendment right to have that favorable verdict taken into account when the district court decides her Title VII claim. Ordinarily petitioner's argument might have merit, but in the circumstances of this case it is clear that petitioner waived any Seventh Amendment right she may have had to use the negligence verdict in her Title VII case.

It is well established that the Seventh Amendment right to a jury trial may be waived, either expressly or impliedly by conduct, such as failure to object to a bench trial or failure to make a timely demand for a jury trial. *United States* v. *Moore*, 340 U.S. 616, 621 (1951); *Kearney* v. *Case*, 79 U.S. (12 Wall.) 275, 281 (1871). Accordingly, when a party persistently seeks to have a case tried to the court, it has waived its right to later assert its Seventh Amendment rights and demand a jury trial. *Reid Bros. Logging Co.* v. *Ketchikan Pulp Co.*, 699 F.2d 1292, 1303-1305 (9th Cir.), cert. denied, 464 U.S. 916 (1983). Similarly, a party waives its right to a jury trial when it fails to object before or during the bench trial. *White* v. *McGinnis*, 903 F.2d 699, 700-703 (9th Cir.) (*en banc*), cert. denied, 111 S. Ct. 266 (1990), and *Lovelace* v. *Dall*, 820 F.2d 223, 227-228 (7th Cir. 1987) (failure to object to bench trial constitutes a waiver even though party filed a timely demand for a jury trial); *Allen* v. *Barnes Hospital*, 721 F. 2d 643, 644 (8th Cir. 1983) (plaintiff waived Seventh Amendment right by failing to object to combined bench trial of Title VII and § 1981 claims).

In this case, petitioner vigorously disclaimed her right to a jury trial on her negligence claim. Pet. App. C33 n. 10. In fact, less than a week before the trial, petitioner filed a motion requesting that the Title VII claim be tried first to the bench, so that the judge's decision on that claim would be used to narrow and define the issues remaining for the negligence jury. Petitioner's counsel stated

that her client had "agreed to waive a trial by jury." C.A. App. 356. Even after her negligence claim was dismissed, petitioner never raised any Seventh Amendment objection to proceeding with the bench trial on her Title VII claim. Apparently petitioner continued to believe that her best chance was to try the Title VII case first to the court and then use the judgment in the Title VII case in her suit against Spivey and her negligence claim against GM (assuming that the dismissal of that claim was reversed on appeal). Petitioner "rediscovered" the Seventh Amendment rights she disclaimed earlier only after she lost the bench trial on her Title VII claim and was faced with the likelihood of summary judgment in her case against Spivey.

Petitioner's Seventh Amendment argument is nothing more than an unseemly "afterthought". *Bradley* v. *Maryland Casualty Co.*, 382 F.2d 415, 420 (8th Cir. 1967) (Blackmun, J.). The disingenuousness of petitioner's argument—and her sudden shift in strategy—is entirely consistent with her handling of this case all along. See *Perkins* v. *General Motors Corp.*, 129 F.R.D. at 662-664. Even had the court of appeals decided the question petitioner presents, in light of her previous disclaimer of her Seventh Amendment rights and her failure to object to the bench trial of the Title VII claim prior to final resolution of her common law claims, petitioner has waived any rights she may have had.

In any event, the question presented by the petitioner, and the entire issue of whether in the unusual circumstances of this case a verdict favorable to the petitioner on her negligence claim would require the district court to vacate both the Title VII judgment and the negligence judgment in *Spivey*, were never considered or decided by the courts below. There is no reason for this Court to decide those hypothetical questions now.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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February 1991

APPENDIX

The affiliates and non-wholly owned subsidiaries of respondent General Motors Corporation are:

ACCSCO S.A. (Belgium)
ACE Limited (Cayman Islands)
AMBRAKE Corporation (USA)
AMRAAM International Licensing Company (USA)
AeroVironment, Inc. (USA)
Alliance Development Corporation (USA)
American Manufacturing Systems, Inc. (USA)
American Mobile Satellite Consortium, Inc. (USA)
Applied Intelligent Systems, Inc. (USA)
Aralmex, S.A. de C.V. (Mexico)
ARINC Incorporated (USA)
Asset Leasing GmbH (West Germany)
Atlantic Satellites Ltd. (Ireland)
Aura s.r.l. (Italy)
Autos y Maquinas del Ecuador S.A. (AYMESA) (Ecuador)
Avicom International, Inc. (USA)
Banque de Credit General Motors (France)
Behaviortech, Inc. (USA)
Beijing International Information Processing Company Limited (Peoples Republic of China)
British Caledonian Flight Training Limited (England)
Bujias Mexicanas, S.A. de C.V. (Mexico)
CAMI Automotive, Inc. (Canada)
CEI Co., Ltd. (USA)
Calsonic Harrison Co., Ltd. (Japan)
Carus Grundstucks-Vermietungsgesellschalt mbH & Co. Object Kuno 65 KG (Federal Republic of Germany)
Carus Grundstucks-Vermietungsgesellschalt mbH & Co. Object Leo 40 KG (Federal Republic of Germany)
China Management Systems Corporation (China)
Cilva Holdings Plc. (England and Wales)
Cimflex Teknowledge (USA)

Coalition Undertaking Remedial Efforts, Inc. (USA)
Comau Productivity Systems, Inc. (USA)
Compagnie de Faisceaux Tunisian International S.A. (Tunisia)
Compania Nacional de Direcciones Automotrices, S.A. de C.V. (Mexico)
Componentes Delfa, C.A. (Venezuela)
Comtrac Corporation (USA)
Constructora Venezolana de Vehiculos, C.A. (Venezuela)
Convesco Vehicles Sales GmbH (West Germany)
DHB-Componentes Automotivos S.A. (Brazil)
Daewoo Automotive Components, Ltd. (Korea)
Daewoo Motor Co., Ltd. (Korea)
Data Services America, Inc. (USA)
Delkor Battery Company, Ltd. (Korea)
Detroit Diesel Corporation (USA)
Diavia s.p.A. (Italy)
EDESA Societe Anonyme Holding (Luxembourg)
E.D.S. Federal Services Corporation (USA)
E.D.S.W.-Mexico S.A. De C.V. (Mexico)
ELTRO GmbH (Federal Republic of Germany)
EPEC S.A. (Brazil)
Earth Observation Satellite Company (USA)
ELEKLUFT Elektronik-und Luftfahrtgerate GmbH (Federal Republic of Germany)
Empresa Mixta GEMACVEN, S.A. (Venezuela)
European Components Corporation (USA)
Fabrica Colombiana de Automotores S.A. ("Colomotores") (Columbia)
Federal Integrated Systems Corporation (USA)
First City Corp. (USA)
G & F Company (USA)
GM Allison Japan Limited (Japan)
GMACC Financiera de Colombia S.A. Compania de Financiamiento Comercial (Colombia)
GMAC RF, Inc. (USA)
GMFanuc Robotics Canada Ltd. (Canada)
GMFanuc Robotics Corporation (USA)
GMFanuc Robotics Europe GmbH (West Germany)

GMFanuc Robotics Italia S.r.l. (Italy)
GMFanuc Robotics (U.K.) Ltd. (England)
GMFanuc Robotique France S.A.R.L. (France)
General Motors Bankgesellschaft m.b.H. (Austria)
General Motors del Ecuador S.A. (Ecuador)
General Motors Egypt (Arab Republic of Egypt)
General Motors France Automobiles S.A. (France)
General Motors Holdings (U.K.) Limited (England)
General Motors Kenya Limited (Kenya)
Genie Mecanique Zairose, S.A.R.L. (Republic of Zaire)
H & R Company (USA)
HBH Company (USA)
HKV (USA)
Hitachi Data Systems Holding Corporation (USA)
Hughes Data Systems (USA)
Hughes-Kenwood RDSS, Inc. (USA)
Hughes Microelectronics Europa Espana, S.A. (Spain)
Hughes Microelectronics Europa Limited (Scotland)
IBC Vehicles Limited (United Kingdom)
I.K. Coach Co., Limited (Japan)
ITC Inland Teknik Oto Yan Sanayi Sirketi (Turkey)
Ilmor Engineering, Inc. (USA)
Ilmor Engineering, Ltd. (England)
Industries Mecaniques Maghrebines, S.A. (Tunisia)
Industrija Delova Automobila, Kikinda (Yugoslavia)
Infocel, Inc. (USA)
Interactive Entertainment, Inc. (Canada)
International Electro-Optical Industry Anonim Sirketi (Turkey)
Interpractice Systems, Inc. (USA)
Isuzu-General Motors Australia Limited (Australia)
Isuzu Motors Limited (Japan)
Japan Communications Satellite Company, Inc. (Japan)
Japan Satellite Communications Network Corporation (Japan)
Kabelwerke Reinshagen GmbH (West Germany)
Kabelwerke Reinshagen Werk Berlin GmbH (West Germany)

Kabelwerke Reinshagen Werk Neumarkt GmbH (West Germany)
Koram Plastics Company, Ltd. (Korea)
MET (USA)
Mecel AB (Sweden)
Metal Casting Technology, Inc. (USA)
Millbrook Pension Management Ltd. (England)
NCRS Holdings Inc. (USA)
National Car Rental Systems, Inc. (USA)
Neodata Holdings, Inc. (USA)
New United Motor Manufacturing, Inc. (USA)
New Venture Gear, Inc. (USA)
Nippon Avionics Co., Ltd. (Japan)
Nippon EDS Co., Ltd. (Japan)
ORRCO, Inc. (USA)
Omnibus BB Transportes, S.A. (Ecuador)
Opel-Automobilwerk Eisenach-PKW GmbH (Germany)
Opel-Handler Versicherungsdienst GmbH (Federal Republic of Germany)
Opel-Wohnbau GmbH (West Germany)
P.T. Mesin Isuzu Indonesia (Indonesia)
PDES, Inc. (USA)
Pacific Monolithics, Inc. (USA)
Packard CTA Pty. Ltd. (Australia)
Packard Electric Vas kft (Hungary)
Penske Transportation, Inc. (USA)
Perceptron (USA)
Promotora de Partes Electricos Automotrices (Mexico)
Rediffusion Simultation Tulsa, Inc. (USA)
Residential Funding Corporation (USA)
Robotic Vision Systems, Inc. (USA)
Ruedas de Aluminio, C.A. (Venezuela)
Saab Automobile AB (Sweden)
Senalizacion y Accessorios del Automovil Yorka, S.A. (Spain)
Shinsung Packard Company, Ltd. (Korea)
Sociedad de Comercializacion Internacional Colmotores S.A. (Colombia)

Societe Francaise des Amortisseurs de Carbon S.A. (France)
Soft-Switch, Inc. (USA)
Subaru-Isuzu Automotive, Inc. (USA)
Sung San Company, Ltd. (South Korea)
Suzuki Motor Corporation (Japan)
Systems Technology Management Corporation (Korea)
T.A.D. Communications Company (USA)
T.A.D. Communications Company International (USA)
Tactical Truck Corporation (USA)
Telecommunications Data Service, Incorporated (USA)
Terminales Electricas, S.A. de C.V. (Mexico)
Thomas Group, Inc. (USA)
3DK Limited (United Kingdom)
Transallison S.A. (Brazil)
Truck and Bus Engineering U.K., Limited (USA)
UKADGE Systems Limited (United Kingdom)
Unitech, Inc. (USA)
United Australian Automotive Industries Limited (Australia)
United Motor Manufacturing, Inc. (USA)
Uveral S.A. (Uruguay)
Vanguarda Componentes Automotivas, S.A. (Brazil)
View Engineering, Inc. (USA)
Volvo GM Canada Heavy Truck Corporation (Canada)
Volvo GM Heavy Truck Corporation (USA)
Westcott Communications, Inc. (USA)